



AMERICAN FISHERIES SOCIETY

MONTANA CHAPTER



SENATE TAXATION

EXHIBIT NO. 5

DATE 3.19.09

BILL NO. SB 507

Senate Taxation Committee
2009 Montana Legislature
Helena, Montana

March 17, 2009

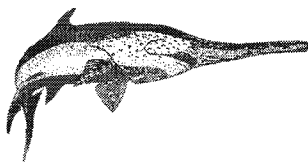
RE: Senate Bill 507 – “An Act Generally Revising and Clarifying Laws Related To The Bed of Navigable Rivers;”

Dear Senators,

On behalf of the more than 350 members of the Montana Chapter of the American Fisheries Society (MCAFS) I appreciate the opportunity to voice our **opposition to certain provisions in Senate Bill 507** (SB 507) which would revise and clarify how an individual or association can utilize the bed of or place structures within the low water mark of Montana’s navigable rivers.

The American Fisheries Society (AFS), founded in 1870, is the oldest and largest professional society representing fisheries scientists in North America. Our mission is to improve the conservation and sustainability of fishery resources and aquatic ecosystems by advancing fisheries and aquatic science and promoting the development of fisheries professionals. AFS promotes scientific research and enlightened management of resources for optimum use and enjoyment by the public. The MCAFS was chartered in 1967. Our membership is comprised of professional fisheries scientists affiliated with state and federal agencies, universities, tribes and private industry, all dedicated to preserving and enhancing the fisheries resources of Montana. Without a doubt our organization represents the largest collective knowledge base regarding aquatic resources and issues affecting these resources in the state of Montana. Issues that may affect the health of our states aquatic resources, their management and conservation, and their perception and use by the public, such as SB 507 does, are very important to us.

This Bill does two things that concern us. First, it would allow the Board of Land Commissioners to authorize easements for all types of instream structures diverting water for beneficial use from Montana’s navigable rivers. Currently the law allows such easements only in very limited circumstances (e.g., MCA 77-2-101 and MCA 70-30-101). Issuance of easements for these structures as proposed in SB 507 would allow owners or associations to maintain, repair, and even move these structures as needed **in perpetuity** regardless of any impact, effects, or harm they might having on the aquatic system. Such authority would eliminate – forever – any additional regulatory oversight, ability or opportunity to request or require modifications, or analyses of environmental impacts. Second, and even more troubling, is the provision in Section 3 that



exempts these authorizations from any environmental review (MEPA, MCA Title 75) prior to authorization, especially if they are a perpetual easement.

Existing water diversion structures, when constructed without consideration of effects to river ecosystems, have demonstrated the potential to have many negative impacts on Montana's aquatic resources. Most obvious among these impacts, many diversions partially or completely block fish movements, disrupting life history patterns and potentially leading to population declines or even extinction. But diversion structures may have less obvious negative impacts to aquatic animals and their habitats by changing flow patterns and water quality; destabilizing and eroding streambeds and streambanks; disrupting nutrient cycling; influencing prey distribution and vulnerability; modifying reproductive success; and entraining aquatic animals in diverted water, among other things. Such impacts have proven not only detrimental to aquatic ecosystems, but also costly to society because consequences of such impacts often include lost economic benefits of sportfishing and increased costs of managing imperiled species.

MCAFS believes that authorizing diversion structures in perpetuity without any environmental consideration would inappropriately minimize the importance and value of the aquatic resources in or dependent on Montana's rivers. The preponderance of scientific and research evidence suggests that water diversion structures, without environmental consideration, can be very harmful to aquatic ecosystems; however, an equally large body of evidence suggests that with environmental review such structures can often be modified to mitigate this harm.

We urge you to reconsider both the perpetual easement – leases or licenses are an adequate solution – and environmental review exemption provisions of SB 507. As currently written we can not support this legislation.

We hope you will amend or oppose SB 507.

With warmest regards,



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President

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